

STATE OF MICHIGAN
COURT OF APPEALS

ANN ETHINGTON,

Petitioner-Appellant,

v

MICHIGAN BELL TELEPHONE COMPANY,
d/b/a AT&T MICHIGAN,

Respondent-Appellee

and

MICHIGAN PUBLIC SERVICE COMMISSION,

Appellee.

UNPUBLISHED

June 14, 2011

No. 295829

Public Service Commission

LC No. 00-016018

Before: MURRAY, P.J., AND HOEKSTRA AND STEPHENS, JJ.

PER CURIAM.

Petitioner appeals as of right from an order of the Michigan Public Service Commission (“PSC”) dismissing her complaint that was premised on MCL 484.2502(1)(e) (“§ 502(1)(e)”), a provision of the Michigan Telecommunications Act (“MTA”), MCL 484.2101 *et seq.* We affirm.

Petitioner obtained a new telephone service through respondent Michigan Bell Telephone Company, doing business as AT&T Michigan (“AT&T”), entitled “Call Plan Unlimited.” This was a basic local exchange calling plan. Petitioner did not get any services other than Call Plan Unlimited. She incurred a one-time line connection charge of \$42.25. When she failed to make required payments on her bills, she was assessed late fees. Moreover, she was sent disconnection notices. She averred in her complaint that these notices stated “that the customer’s basic local exchange service would be disconnected unless the customer paid for unregulated charges being profuse and unexplained adjustments to the customer’s account.” Section 502(1)(e) prohibits the provider of a telecommunication service from stating “to an end-user that their basic local exchange service or other regulated service will be discontinued unless the end-user pays a charge that is due for an unregulated service.”

Preliminarily, petitioner argues that the PSC did not have jurisdiction. However, MCL 484.2203(1), a provision of the MTA, states:

Upon receipt of an application or complaint filed under this act, or on its own motion, the commission may conduct an investigation, hold hearings, and issue its findings and order under the contested hearings provisions of the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

Petitioner filed her complaint with the PSC and alleged a violation of § 502(1)(e) of the MTA. Accordingly, the PSC had authority to hear this matter under § 203(1).

Petitioner's claim to the contrary is based on the assertion that basic local exchange services are not regulated and that the PSC cannot exercise jurisdiction over a matter that it does not regulate. The PSC has only those powers granted by statute. See *In re Pub Serv Comm for Transactions Between Affiliates*, 252 Mich App 254, 263; 652 NW2d 1 (2002). However, the PSC does regulate basic local exchange services. MCL 484.2202 provides in pertinent part:

(1) In addition to the other powers and duties prescribed by this act, the commission shall do all of the following:

* * *

(c) Promulgate rules under section 213 to establish and enforce quality standards for all of the following:

(i) The provision of basic local exchange service to end users.

Moreover, MCL 484.2301, a provision of Article 3(A) of the MTA that deals with regulated telecommunications services/basic local exchange, requires that the PSC issue a license before basic local exchange service is provided or resold. MCL 484.2303(3) and (4) require the PSC to establish procedures for the transfer of such a license. MCL 484.2315(1), (2), and (12) provide that the PSC shall require basic local exchange providers to offer certain services for the deaf and establish a rate for each subscriber line to allow the provider to recover costs incurred. MCL 484.2316 provides that the PSC shall require providers to offer reduced rates to low income residential customers, and requires that the commission establish a rate for each subscriber line to allow the provider to recover costs incurred. These statutes establish that "basic local exchange services" are regulated.

Petitioner next argues that AT&T wrongfully threatened to cancel her basic local exchange service for nonpayment of an installation fee and late fees, which she characterizes as an unregulated installation line connection service and unregulated financial services. In determining that these were not "unregulated services" within the meaning of § 502(1)(e), the PSC held:

Late payment charges and installation charges do not constitute unregulated services; rather, they are charges associated with receiving any telephone service.

The PSC's determination that the installation charge and late fee charges were charges associated with the Call Plan Unlimited basic local exchange service, as opposed to services themselves, is a reasonable construction of the regulatory scheme entitled to respectful consideration. An agency's construction of a statute should be given respectful consideration and should not be

overruled without cogent reasons. *In re Complaint of Rovas*, 482 Mich 90, 103; 754 NW2d 259 (2008). In this case, there are no cogent reasons to depart from the analysis.

Finally, petitioner argues that she had a due process right to an evidentiary hearing to determine whether the PSC regulates “line connection services” and “financial services.” Since nonpayment of unregulated services cannot be used to threaten disconnection, she maintains that the PSC could not make a determination regarding whether there was a § 502(1)(e) violation without this information. Whether due process rights were violated is a constitutional question that is reviewed de novo. *Sidun v Wayne Co Treasurer*, 481 Mich 503, 508; 751 NW2d 453 (2008). However, there was no dispute regarding what the charges were for. Since all agreed the relevant charges were for installation and late fees, there was no factual dispute. The issue was whether the undisputed charges were unregulated services. Whether they were unregulated services was a question of law. Since they were not “services” within the meaning of the statute as a matter of law, the lack of an opportunity to show that they were unregulated services did not deprive petitioner of due process.

Affirmed.

/s/ Christopher M. Murray
/s/ Joel P. Hoekstra
/s/ Cynthia Diane Stephens